IN THE M.P. ADMINISTRATIVE TRIBUNAL, BENCH RAIPUR.

O.A.NO. 80 OF 2000

APPLICANT : Dr. R.K. Divya S/o Late P.R.Divya, aged about 40 years, Asstt. Surgeon Govt. 100 Beded Hospital, Korba, Distt. Korba (M.P.)

VERSUS

RESPONDENTS : 1. State of Madhya Pradesh, through Principal Secretary, Public Health & Family Welfare Department, Vallabh Bhawan, Bhopal.

2. Chief Medical Officer & Health Officer, Bilaspur.

3. Chief Medical Officer & Health Officer Korba.

4. Block Medical Officer, Primary Health Centre, E Korba.

APPLICATION UNDER SEC.19 OF THE ADMINISTRATIVE TRIBUNAL ACT, 1985.

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**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**

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**Single Bench: Hon'ble Shri Satish K. Agnihotri, J.**

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**W. P. (S) No. 3151 of 2005**

Petitioner : Dr. R. K. Divya

Versus

Respondent : State of Madhya Pradesh (now Chhattisgarh) and others

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Shri Sameer Behar, Advocate for the petitioner.

Shri Ajay Dwivedi, Panel lawyer for the respondents.

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**ORDER**

**(28th August, 2006)**

1. The petitioner was appointed as Assistant Surgeon at the 100 bedded hospital, at Korba. Vide order dated 3.12.1996 (Annexure A/1) he was transferred to the Primary Health Center, Lemroo, District-Korba. Being aggrieved the petitioner impugned the said transfer order dated 3.12.1996 by filing Original Application No. 483/97 before the State Administrative Tribunal, Jabalpur. Learned Tribunal by its order dated 6.2.1998 (Annexure A/2) quashed the impugned transfer order. With regard to the question of payment of salary it was observed that the same would be decided by the competent authority within one month of the filing of the certified copy of the said order.

2. The respondent No.1 pursuant to the order dated 6.2.1998 passed by the Tribunal, declined to make payment of the salary from 10.12.1996 to 15.2.1998 on the principle 'No work, no pay', vide order dated 29.1.1999 (Annexure A/9). The petitioner has filed this petition impugning the order dated 29.1.1999.

3. On perusal of the papers, it appears that the impugned order dated 29.1.1999 was passed without application of mind. The principle of 'No work, no pay' is applicable when the petitioner remained absent from duty, voluntarily. But in the case where the employee is restrained from working, the said principle would not be applicable.

4. In the present case, it appears that pursuant to the impugned transfer order, which was later on quashed by the Tribunal, the petitioner was restrained from working. The transfer order dated 3.12.1996 became non-est on the ground that the same was quashed by the Tribunal in O.A.No.483/97, vide order dated 6.2.1998. Thus, the petitioner cannot be denied the salary on the principle of 'No work, no pay'. However, keeping in view the fact that the petitioner remained out of work, the respondents are directed to consider the case of the petitioner for payment of back wages, keeping in view the financial position and other considerations.

5. Accordingly, the order dated 29.1.1999 is quashed. The respondents may further consider to grant payment of interest also on the unpaid salary, for which the petitioner has to file this petition in this Court. Needful should be done by the respondents within a period of two months from the date of receipt of a copy of this order, in accordance with law.

6. The petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur